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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,638	08/22/2001	John J. Gregson	BLD920010006US1(14385)	8740
7590 11/15/2004 Richard L. Catania., Esq. Scully, Scott, Murphy & Presser 400 Garden City Plaza Garden City, NY 11530			EXAMINER LIN, KELVIN Y	
			ART UNIT 2142	PAPER NUMBER

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,638

Applicant(s)

GREGSON, JOHN J.

Examiner

Kelvin Lin

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.



Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/22/01. 
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Specification

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Specification rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
2. Misspelling – Page 2 [0041] “ ..vase reference..” should be spelled as “ .. base reference .. “
3. On page 2 [0041] “the base reference year RAM”, and page 2 [0047] “A(x)” was not being described clearly and failed to comply with the enablement requirement.
4. In addition, the claim 2 contains subject matter - “manpower” which was not being described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2, 3, 4, 8, 9, 13, 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 : "manpower" is not being defined in the specification.

Claims 3, 4, 8, 9, 13, and 14 – the function A(x) fails to point out and distinctly claim the subject matter which application regards as the invention

6. The above noted problems are not necessarily an exhaustive listing, but a meant to be exemplary of the types of errors present. It is incumbent upon an applicant to ensure that any amendment filed resolves all deficiencies and places the claims in compliance with 35 USC 112.
7. Appropriate correction is required.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-15 are rejected under 35 USC 102(e) as being anticipated by Schnee et al., (US Patent 6694419).
9. Regarding Claim 1, Schnee teaches a method of measuring the size of a distributed system of interconnected servers, said method comprising the steps of:
 - for each said server, forming a first weighted asymptotic function of the count of CPUs installed in said each said server, and a CPU factor based on said server architecture and operating system (Schnee, col.44, l.23-46);
 - for each said server, forming a second weighted asymptotic function of the amount of random access memory installed on said each said server, and a normalizing factor representing a reference date, and a RAM factor based on said server architecture and operating system (Schnee, col. 6, l.15, col. 19-29,col.43, l.2-3) ;
 - forming a product of said first weighted asymptotic function for said each said server (Schnee, col.10, l.43-44, col. 26, l.37-46); and
 - forming the sum of said product for all said interconnected servers (Schnee, col.26, l.42-44).

10. Regarding claim 2, Schnee further discloses the method of claim 1, further comprising the step of allocating support manpower based on said sum (Schnee, col.26, l.60-64).
11. Regarding claim 3, Schnee further discloses the method of claim 1, wherein the first weighted asymptotic function is represented as $f_{\text{sub.cpu}}$ and is of the form: $F_{\text{sub.CPU}} = A(x) + e_{\text{sub.x}}$. (Schnee, col.15, l.24-30, This equation shows the target level for resource, which is the function of CPU and can be extended by using a Taylor's series)
12. Regarding claim 4, Schnee further discloses the method of claim 1, wherein the second weighted asymptotic function is represented as $f_{\text{sub.RAM}}$ and is of the form: $F_{\text{sub.RAM}} = A(x) + e_{\text{sub.x}}$. (Schnee, col.16, l.42-54, This equation shows the final value for memory is calculated and it can be extended by using a Taylor's series method).
13. Regarding claim 5, Schnee further discloses the method of claim 1, wherein the reference date represents a base reference year RAM (Schnee, col.11, l.30-35, "... the time interval may be user definable and each may vary as a matter of design").
14. Regarding claims 6-10 that describes the limitation of a system for measuring the size of a distributed system of interconnected servers, have similar limitations as claims 1-5. Therefore, claims 6-10 are rejected for the same reasons set forth in the rejection of claims 1-5.
15. Regarding claims 11-15 that describes the limitation of a program storage device

for measuring the size of a distributed system of interconnected servers measuring, have similar limitations as claims 1-5. Therefore, claims 11-15 are rejected for the same reasons set forth in the rejection of claims 1-5.

Conclusion

The prior art made of record and not relied upon is considered pertinent to application's disclosure.

- Ellis, III (Patent No. 6725250) Global Network Computer.
- Quernemoen, (Patent No. 6453269) Method of Comparison for Computer Systems And Apparatus Therefor.
- Freeman et al., (Patent No. 6807580) Method And Apparatus for Communicating Among A Network of Servers.
- IEEE – Giladi et al., SPEC as a performance evaluation measure, Computer, Vol. 28, Issue:8, Aug. 1995, pp. 33-42

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelvin Lin whose telephone number is 571-272-3898.


The examiner can normally be reached on Flexible 4/9/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on 571-272-3896. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2142

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11/08/04
KYL


JACK D. HARVEY
SUPERVISORY PATENT EXAMINER